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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,068	12/11/2003	Michael Tyler	4316/055	1263

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EXAMINER

KUGEL, TIMOTHY J

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,068

Applicant(s)

TYLER ET AL.

Examiner

Timothy J. Kugel

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 11-14 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 4, 9, 10 and 15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Claims 1-20 are pending as filed on 11 December 2003.

Specification

2. The disclosure is objected to because of the following informalities: The acronym DMDMH should be defined, at least at its first appearance (Page 3 Line 30).

Appropriate correction is required.

Claim Interpretation

3. The term "weight percent" has been construed to mean, "weight percent based on the total composition".
4. Claims 5, 9, 10, 19 and 20 use the transitional term 'including', which has been construed as being synonymous with 'comprising', which is inclusive or open-ended and does not exclude additional, unrecited elements or method steps.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2, 5-8, 11, 12 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 2 recites the limitation "...wherein the balance of the composition is water in an amount between about 20 and 90 weight percent." However, the maximum amount of the other recited elements of the composition in claim 1 total 70%, so the balance would have to be 30% water; similarly, the minimum amount of the recited

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elements of the composition in claims 1 total 11%, leaving a maximum amount of water available of 89%.

For the purpose of examination, claim 2 was construed to recite, "...wherein the balance of the composition is water in an amount between about 30 and 89 weight percent."

8. Claim 17 recites the limitation "sodium thiosulfate". There is insufficient antecedent basis for this limitation in the claim as Claim 16 recites, "...and an alkali metal sulfite..." and sodium thiosulfate is not a sulfite. For the purpose of examination, claim 16 was construed to recite "...and an alkali metal sulfite or sodium thiosulfate..."

9. Claims 17-20 recite the limitation "The composition..." There is insufficient antecedent basis for this limitation in the claims as claim 16 recites, "A system..."

For the purpose of examination, claims 17-20 were each construed to recite, "The system..."

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-3, 13 and 16-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,284,599 (Anderson et al.) in view of U.S. Patent 5,078,889 (Higgins et al.). Anderson et al. teach a water treatment and sterilization system and aqueous composition comprising 1.48 to 41% alkali metal phosphate

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(Abstract, Column 4 Lines 5-7, and Column 8 Lines 39-45)—including monopotassium phosphate (Column 8 Lines 66-68) that operates in a pH range of 7.0 to 8.0 (Column 3 Lines 40-44, Column 4 Lines 12-16 and Column 8 Lines 56-62). Anderson et al. do not disclose expressly the use of sodium hydrosulfite in the composition.

Higgins et al. disclose a water treatment system that operates at a pH of 7-8 (Column 6 Lines 59-61) includes treatment with a 1% sodium hydrosulfite solution (Column 13 Lines 33-36).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include the sodium hydrosulfite of Higgins et al. in the treatment system of Anderson et al. The motivation to do so would have been to remove chlorine (Column 13 Lines 29-50).

12. Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson et al. and Higgins et al. in further view of U.S. Patent Application Publication 2002/0117445 (Whiteman). Anderson et al. and Higgins et al. combine to teach the water treatment and sterilization system and composition as above. Anderson et al. and Higgins et al. do not disclose expressly the packaging of the composition in a gel capsule.

Whiteman discloses a fermentation system and composition packaged in a dissolvable gel capsule (¶0089).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include the composition of Anderson et al. and Higgins et al. in the gel

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capsule of Whiteman. The motivation to do so would have been easier measurability and to facilitate automated feeding (Whiteman ¶0089).

Allowable Subject Matter

13. Claims 4, 9, 10 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 5-8, 11, 12, 19 and 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent 5,310,633 (Yoshida et al.) teach a similar composition—comprising 30-80% sodium thiosulfate, 5-50% sodium pyrosulfite (sodium metabisulfite), 0.1-0.4 mol/l (1.24-4.96%) disodium phosphate and/or sodium carbonate, and sodium hydroxide—but Yoshida et al. are silent as to the concentration of the sodium hydroxide component and the concentrations of the other components taught are different to those claimed.

U.S. Patent 6,488,091 (Weaver et al.) also teaches a similar sodium thiosulfate composition, but is silent as to concentration of the thiosulfate.

U.S. Patent 4,421,533 (Nishino et al.) teach a composition comprising sodium thiosulfate, sodium or potassium hydroxide, monosodium phosphate and sodium carbonate, but are silent as to the concentrations of the components.

Also made of record and considered pertinent to applicant's disclosure:

U.S. 4,451,440

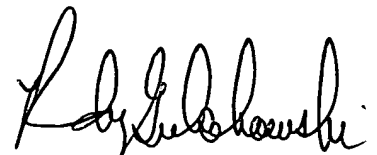
05-1984

Thompson, III

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Kugel whose telephone number is (571) 272-1460. The examiner can normally be reached on 6:30 AM - 3:30 PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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